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SENATE

REPORT
100-79

STRATEGIC PETROLEUM RESERVE SECURITY

JUNE 22, 1987.—Ordered to be printed

Filed under the authority of the order of the Senate of June 19, 1987

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 836]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 836) to amend the Department of Energy Organization Act to authorize protective force personnel who guard the strategic petroleum reserve or its storage and related facilities to carry firearms while discharging their official duties and in certain instances to make arrests without warrant; to establish the offense of trespass on property of the strategic petroleum reserve, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill, do pass.

PURPOSE

S. 836 would authorize the Department of Energy to arm its protective force personnel at the Strategic Petroleum Reserve (SPR) sites and to empower them in certain instances to make arrests without warrants for violations of Federal law. It would also establish a Federal offense of trespass on federally-owned Strategic Petroleum Reserve sites.

BACKGROUND AND NEED

The 520 million barrels of oil contained in the SPR as of March 31, 1987, are worth about $10 billion, making SPR one of the Nation's most valuable Federal complexes. It is an essential element of our national security as well. The risk of terrorist attack is a

S313-17

real and present danger that cannot be discounted. Without Federal authority DOE's security personnel currently only have authority to make citizens' arrests for trespass under State law (Louisiana and Texas). However, such arrests are difficult to perfect and prosecute. In addition, performing a citizen's arrest can subject a security guard to personal civil or criminal liability if a mistake is made. Local enforcement agencies have deputized some contractor security personnel in Louisiana, but not in Texas. These deputy commissions can be withdrawn and do not extend beyond local jurisdictions, or across State lines.

S. 836 would amend the DOE Organization Act to authorize the Secretary of Energy to arm SPR protective force personnel. It would authorize these personnel to arrest without a warrant where there is violation of a Federal offense (felony or misdemeanor) committed in the security officer's presence. In the case of a felony, an arrest without a warrant is also authorized if the officer has reasonable grounds to believe the person has committed or is committing the felony and is in flight or is in the area.

The authority sought through the new section is similar to the specific authority already vested in protective force personnel at nuclear facilities under section 161k of the Atomic Energy Act (42 U.S.C. 2201(k)), and in personnel of several other agencies, e.g., United States Marshals (18 U.S.C. 3053); Secret Service inspectors and agents (18 U.S.C. 3056); postal inspectors (18 U.S.C. 3061); General Services Administration special policemen (40 U.S.C. 318d); the Customs Service (26 U.S.C. 7607); and the Drug Enforcement Administration (21 U.S.C. 878). Moreover, as in the case of the protective force personnel at nuclear facilities, the authority sought through the new section could be granted to contractor personnel as well as Federal employees of the Department of Energy. This would be consistent with the long-standing, extensive, and successful use of contractors by the Department of Energy and its predecessor agencies to carry out agency missions.

S. 836 would also make it a crime to trespass on SPR sites designated by the Secretary. Currently, the only law applicable to trespassers on these sites is the State or local law regarding trespass on posted property. The sanctions tend to be minimal. Under this bill, a willful violation would be a misdemeanor punishable by a fine of no more than $5,000, imprisonment for not more than 1 year, or both. DOE must post conspicuously the property covered by this provision. This trespass provision is modeled after section 229 of the Atomic Energy Act (42 U.S.C. 2278a), which makes it a Federal offense to trespass on the Department of Energy atomic energy facilities.

Legislative History

S. 836 was re-introduced by request of the Administration on March 25, 1987. The measure was first introduced by request of the Administration as S. 2925 during the 99th Congress. Markup of S. 836 occurred on June 3, 1987. There were no hearings.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on June 3, 1987, by unanimous vote of a quourm present recommends that the Senate pass S. 836.

The rollcall vote on reporting the measure was 19 yeas, 0 nays, as follows:

YEAS

Mr. Johnston
Mr. Bumpers
Mr. Ford
Mr. Metzenbaum
Mr. Melcher
Mr. Bradley
Mr. Bingaman
Mr. Wirth
Mr. Fowler
Mr. Conrad
Mr. McClure*
Mr. Hatfield
Mr. Weicker*
Mr. Domenici
Mr. Wallop
Mr. Murkowski*
Mr. Nickles*
Mr. Hecht
Mr. Evans

*Indicates vote by proxy.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 12, 1987.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 836, as ordered reported by the Senate Committee on Energy and Natural Resources, June 3, 1987. CBO estimates that enactment of this bill would result in no significant cost to the federal government, and in no cost to state or local governments.

S. 836 would amend the Department of Energy Organization Act to authorize protective force personnel who guard the strategic petroleum reserve (SPR) or its storage and related facilities to carry firearms while discharging their official duties and in certain instances to make arrests without warrant; and would make trespassing on SPR property a federal offense.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

JAMES BLUM,
(for Edward M. Gramlich, Acting Director).

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 836.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses. No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy. In terms of paperwork, the Secretary of Energy would issue guidelines under which SPR security personnel from DOE and its contractors could carry firearms and make arrests without warrant for Federal offenses under certain circumstances. The Secretary of Energy could issue regulations regarding trespass on SPR facilities, but DOE must post on the SPR property conspicious notification that the property is subject to the regulations.

EXECUTIVE COMMUNICATIONS

The pertinent legislative reports and communications received by the Committee from the Office of Management and Budget and from the Department of Energy setting forth Executive agency recommendations relating to the identical predecessor bill (S. 2925) during the 99th Congress follow:

E&UR

Department of Energy
Washington, DC 20585

SEP 22 1986

EC3745

SEP 12 1986

EX. 39,

Honorable George Bush
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

Enclosed is proposed legislation to give the Department of Energy explicit authority to arm its Strategic Petroleum Reserve (SPR) security personnel and empower them in certain instances to make arrests without warrants for violations of Federal law, and to establish the Federal offense of trespass on Federally-owned SPR sites.

Purpose of the Legislation

The Department of Energy is custodian of a vast quantity of oil stored for use in an energy emergency. Experienced and professional protective force personnel are essential to maintaining the proper security level at the SPR. In order for the security personnel staff to be able to perform their duties properly, they must be armed and should have the authority to detain or arrest, without warrant if necessary, those persons who threaten site security by violating, or attempting to violate, Federal law.

The risk of terrorist activities at SPR sites, where crude oil essential to the national security is stored, or at related Government facilities used in oil transportation to and from those sites presents a real and present danger. All of the SPR sites are in relatively remote areas and subject to local law enforcement agencies. These agencies, however, have limited human and physical resources to apply to deterring acts by terrorists or other criminal groups. Moreover, while it is key to the security of the SPR that potential offenders be kept from vital SPR facilities and that there be an ability to react to apparent threats at SPR sites, SPR guards generally have authority only to make citizens' arrests for trespass under state law. Local enforcement agencies have deputized some protective force contractor personnel in order to provide them with some additional measure of authority with which to conduct their security functions.

Those deputy commissions, however, can be withdrawn by the local authorities at their sole discretion. In addition, those commissions are limited to specific jurisdictions. In Texas this limitation would not permit the interchange of personnel between many sites. Also, the commissions would be of no value if the protective force contractor personnel had to be moved across state lines to meet a significant threat posed at another site.

Protective force personnel of the Department of Energy and its contractors undergo a stringent training program to prepare them for dealing with a myriad of confrontation situations. Their ability to react to terrorist activities against persons and property, however, may be impaired to the detriment of the public safety and national security by their lack of confidence in their authority to respond to criminal conduct and their concern over personal civil liability in the event of error. Without federal or state arrest authority, SPR guards can make only citizens' arrests. These arrests are difficult to perfect and can result in deficiencies that end in the release of a criminal. In addition, the SPR guards could be subject to civil or criminal liability for honest and reasonable mistakes in the execution of their duties. The proposed legislation, therefore, primarily is intended to accord SPR guards adequate personal protection from civil or criminal liability when they discharge a firearm or arrest individuals while responsibly executing their duties.

The Bill

The proposed legislation would add a new section to the Department of Energy Organization Act (42 U.S.C. §§ 7101-7352) to authorize the Secretary of Energy to arm SPR protective force personnel while they are protecting the SPR or its storage and related facilities. It also would authorize them to make arrests without warrant for violation of a federal offense committed in their presence or a felony if they have reasonable ground to believe that the person to be arrested has committed or is committing the felony.

The authority sought through the new section is similar to the specific authority already vested in protective force personnel at nuclear facilities under section 161k of the Atomic Energy Act (42 U.S.C. § 2201(k)), and in personnel of several other agencies, e.g., United States Marshals (18 U.S.C. § 3053); Secret Service inspectors and agents (18 U.S.C. § 3056); postal inspectors (18 U.S.C. § 3061); General Services Administration special policemen (40 U.S.C. § 318d); the Customs Service (26 U.S.C. § 7607); and the Drug Enforcement Administration (21 U.S.C. § 878). Moreover, as in the case of the protective force personnel at nuclear facilities, the authority sought through the new section could be granted to contractor personnel as well as federal employees of the Department of Energy. This would be

consistent with the long-standing, extensive, and successful use of contractors by the Department of Energy and its predecessor agencies to carry out agency missions.

The legislation also would make trespass on SPR sites designated by the Secretary a federal crime. There is no federal law of general applicability concerning trespass on federal property. A number of federal activities, however, are protected by trespass statutes that have proven to be useful in maintaining adequate security at covered installations. The trespass provision in this proposal is modeled after section 229 of the Atomic Energy Act (42 U.S.C. § 2278a), which makes it a federal offense to trespass on Department of Energy atomic energy facilities. See United States v. Thompson, 687 F.2d 1279 (10th Cir. 1982). The Secretary would be authorized to issue regulations prohibiting unlawful entry onto the SPR, its storage or related facilities, or real property subject to the jurisdiction of the Secretary under the SPR provisions of EPCA. Those who violate these regulations could be punished by a fine of not more than $5,000, imprisonment for not more than one year, or both.

Given its importance to the security of the Nation, the SPR is a potential target of terrorists. The grave responsibility of assuring protection of the SPR falls upon and necessitates decisive action by its protective force personnel. Enactment of this legislation is necessary for the maintenance of adequate security of the SPR and its storage and related facilities so that they will continue to be available when needed.

Cost and Budget Data

Enactment of this legislation will not result in a significant increase in budgetary requirements for the Department of Energy.

The Office of Management and Budget advises that from the standpoint of the President's program, there is no objection to the presentation of this legislation for the consideration of Congress.

Sincerely,

J. Michael Farrell
General Counsel

Enclosure

OFFICIAL COMMUNICATION
RECEIVED IN THE OFFICE OF
THE PRESIDENT OF THE SENATE
DATE RECEIVED 15 SEP 1983
TIME RECEIVED
RECEIVED

A BILL

To amend the Department of Energy Organization Act to authorize protective force personnel who guard the Strategic Petroleum Reserve or its storage and related facilities to carry firearms while discharging their official duties and in certain instances to make arrests without warrant; to establish the offense of trespass on property of the Strategic Petroleum Reserve; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a new section 661 is added to the Department of Energy Organization Act after section 660 (42 U.S.C. § 7270) to read as follows:

"GUARDS FOR STRATEGIC PETROLEUM RESERVE FACILITIES

"SEC. 661. (a) Under guidelines prescribed by the Secretary and concurred with by the Attorney General, employees of the Department of Energy and employees of Department of Energy contractors while discharging their official duties of protecting the Strategic Petroleum Reserve or its storage or related facilities and protecting persons upon the Strategic Petroleum Reserve or its storage or related facilities may --

"(1) carry firearms, if designated by the Secretary and qualified for the use of firearms under the guidelines, and

"(2) arrest without warrant any person for an offense against the United States --

"(A) in the case of a felony, if the employee has reasonable grounds to believe that the person --

"(i) has committed or is committing a felony; and

"(ii) is in or is fleeing from the immediate area of the felony; and

"(B) in the case of a felony or misdemeanor, if the violation is committed in the presence of the employee.".

SEC. 2. A new section 662 is added to the Department of Energy Organization Act after section 661 added by this Act to read as follows:

"TRESPASS ON STRATEGIC PETROLEUM RESERVE FACILITIES

"SEC. 662. (a) The Secretary may issue regulations relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property into or onto the Strategic Petroleum Reserve, its storage or related facilities, or real property subject to the jurisdiction, administration, or in the custody of the Secretary under part B of title I of the Energy Policy and Conservation Act (42 U.S.C. §§ 6231-6247). The Secretary shall post conspicuously on the property

subject to the regulations notification that that property is subject to the regulations.

"(b) Whoever willfully violates a regulation of the Secretary issued under subsection (a) shall be guilty of a misdemeanor and punished upon conviction by a fine of not more than $5,000, imprisonment for not more than one year, or both.".

SEC. 3. The table of contents for the Department of Energy Organization Act is amended by adding after the item relating to section 660 the following new items:

"Sec. 661. Guards for Strategic Petroleum Reserve facilities.

"Sec. 662. Trespass on Strategic Petroleum Reserve facilities.".

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, S. 836, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

DEPARTMENT OF ENERGY ORGANIZATION ACT (PUBLIC LAW 95-91; AUGUST 4, 1977)

CONTENTS

Sec. 2. Definitions

. . . . . .

Sec. 661. Guards for strategic petroleum reserve facilities.
Sec. 662. Trespass on strategic petroleum reserve facilities.

. . . . . .

AUTHORIZATION OF APPROPRIATIONS

SEC. 660. Appropriations to carry out the provisions of this Act shall be subject to annual authorization. (42 USC 7270).

GUARDS FOR STRATEGIC PETROLEUM RESERVE FACILITIES

SEC. 661. (a) Under guidelines prescribed by the Secretary and concurred with by the Attorney General, employees of the Department of Energy and employees of Department of Energy contractors while discharging their official duties of protecting the strategic petroleum reserve or its storage or related facilities and protecting persons upon the strategic petroleum reserve or its storage or related facilities may—

(1) carry firearms, if designated by the Secretary and qualified for the use of firearms under the guidelines, and

(2) arrest without warrant any person for an offense against the United States—

(A) in the case of a felony, if the employee has reasonable grounds to believe that the person—

(i) has committed or is committing a felony; and

(ii) is in or is fleeing from the immediate area of the felony; and

(B) in the case of a felony or misdemeanor, if the violation is committed in the presence of the employee.

TRESPASS ON STRATEGIC PETROLEUM RESERVE FACILITIES

SEC. 662. (a) The Secretary may issue regulations relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property into or onto the strategic petroleum reserve, its storage or related facilities, or real property subject to the jurisdiction, administration, or in the custody of the Secretary under part B of title I of the Energy Policy and Conservation Act (42 U.S.C. 6231-6247). The Secretary shall post conspicuously on

the property subject to the regulations notification that that property is subject to the regulations.

(b) Whoever willfully violates a regulation of the Secretary issued under subsection (a) shall be guilty of a misdemeanor and punished upon conviction by a fine of not more than $5,000, imprisonment for not more than one year, or both.

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